

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY GREEN,	§	
	§	No. 379, 2009
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	
	§	File Nos. 08-0607T, 01-07976
Petitioner Below,	§	Pet. Nos. 08-18962, 07-03280
Appellee.	§	

Submitted: December 30, 2009

Decided: March 25, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justice.

ORDER

This 25th day of March 2010, upon consideration of the appellant's opening brief, his attorney's motion to withdraw, and the respective responses of appellee-Division of Family Services (DFS) and attorneys guardian *ad litem* appointed by the Family Court, it appears to the Court that:

(1) This is an appeal from the Family Court's termination of the appellant's parental rights. The appellant's counsel has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1.¹ The

¹ See Del. Supr. Ct. R. 26.1 (providing for continuing obligation of appellant's trial counsel in appeal from termination of parental rights).

appellant's counsel submits that he is unable to present a meritorious argument in support of the appeal, and that the appellant, Larry Green (Green), although notified of his right to submit points for this Court's consideration, has not submitted any points.² In their responses to the opening brief, DFS and the attorneys guardian *ad litem* have each moved to affirm the Family Court's judgment.

(2) On February 2, 2007, DFS filed a dependency/neglect petition seeking emergency custody of five children—one twelve-year-old girl and four boys ranging in age from ten to six (“the children”). The petition alleged that the children were at risk of physical abuse from their mother and Green with whom they lived, and that the family was homeless.

(3) The Family Court granted DFS' dependency/neglect petition by *ex parte* order. Thereafter, at each of the hearings held in the dependency/neglect proceedings, the Family Court found that the children were dependent and that it was in their best interest to remain in the custody of DFS.

(4) Green is the biological father of the two youngest children taken into DFS custody. This appeal is from the Family Court's termination

² By Order dated June 30, 2009, the Court assigned pseudonyms to the appellant, his biological children and the children's mother. Del. Supr. Ct. R. 7(d).

of Green's parental rights in those two children ("Green's children" or "his children").

(5) As a result of the charges that he had assaulted the children, Green was incarcerated and/or under a no contact order for several months following the children's placement in DFS custody. Once he was released from incarceration and the no contact order was lifted, Green began weekly supervised visits with the children and entered into a case plan with DFS. The primary goal of the case plan was reunification.

(6) Green's reunification case plan identified eight "problem areas" each of which had a corresponding course of action designed to lead to a successful "outcome." Key problem areas in Green's case plan were financial issues, "expectations for children," "family violence concerns" and housing.

(7) In the area of financial issues, Green was required to provide income verification, and DFS was required to confirm Green's financial ability to provide for the children. The successful outcome in this area was defined as "[p]arent(s) will obtain employment or other income to provide for the family's basic needs."

(8) In the area of "expectations for children," Green was required to participate with a parent aide service and with the children's therapies as

the therapists deemed necessary. DFS was required to complete a referral for a parent aide service, contact the service providers to assess Green's progress and participation, and verify Green's "ability to manage/decrease the [children's] aggressive/challenging behaviors."

(9) Under "family violence concerns," Green was required to successfully complete an anger management class. DFS was required to provide a list of available programs upon request and verify Green's successful completion.

(10) In the area of housing, Green was required to obtain stable housing, and DFS was required to verify that the housing was appropriate for the children. The successful outcome in this area was defined as "[p]arent(s) will be able to secure safe, stable housing."

(11) After each hearing in the dependency/neglect proceedings, the Family Court issued written findings on Green's progress under the case plan and DFS' efforts to reunite the family.³ After a permanency hearing held on January 8, 2008, the Family found that DFS had made reasonable efforts to reunite the family, but that the "primary barrier of achieving reunification remains lack of appropriate housing." After a post-permanency review hearing on June 9, 2008, the Family Court found that

³ See Del. Code Ann. tit. 29, § 9003(13) (2003) (providing that DFS has the duty to provide reunification services for children and their families).

DFS had made reasonable efforts to reunify the family, but that the children could not be placed in the apartment where Green was living, that Green was “not particularly interactive with the children,” that Green’s income was “inadequate to support the full family,” and that Green had not completed one remaining anger management class.

(12) On May 28, 2008, DFS filed a motion to change the plan goal from reunification to termination of parental rights. The motion was addressed at the post-permanency hearing held on June 8, 2008 and at a second permanency hearing held on July 9, 2008. At both hearings, the DFS case worker, Kerri Parise (Parise), testified about DFS’ reunification efforts and Green’s lack of progress in several areas of the case plan, most notably earning adequate income, obtaining appropriate housing, completing anger management, and interacting appropriately and effectively with the children.

(13) At the conclusion of the July 9, 2008 hearing, the Family Court granted DFS’ motion to change the goal to termination but approved the concurrent goal of reunification. When doing so, the Family Court judge advised the parties:

I will grant the motion and change the goal to termination of parental rights. However, [DFS] is going to continue to exercise – or concurrently plan with parents for reunification in the following regard, most of what has to be done is the parents.

They know what they have to do. They know what services they have to engage in at this point.⁴

(14) On June 13, 2008, DFS filed a petition for termination and transfer of parental rights.⁵ As to Green, the petition was based on his inability or failure to plan adequately for [his children's] physical needs or mental health and development.

(15) During the course of the four-day termination hearing, the Family Court heard testimony from a total of fifteen witnesses, including Green, his children's foster home care providers, Laura Robinson-Guy, the foster home care treatment coordinator, Kelly Lacky, the DFS permanency worker assigned to the family, Parise, Chuck Brown, the parent aide supervisor, and individual child therapists Celeste Hoff from Child Mental Health and Carey Manza from Catholic Charities.⁶ By decision dated June 2, 2009, the Family Court granted DFS' petition to terminate Green's parental rights in his children.⁷ This appeal followed.

(16) "In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries."⁸ First, there must be proof of a

⁴ Hr'g Tr. at 42 (July 9, 2008).

⁵ DFS filed an amended petition on June 16, 2008 and a second amended petition on July 22, 2008.

⁶ The termination hearing began on October 31, 2008, continued on January 20 and 21, 2009, and concluded on March 6, 2009.

⁷ The Family Court also terminated the mother's parental rights in Green's children.

⁸ *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

statutory basis for termination under title 13, section 1103 of the Delaware Code.⁹ “Second, there must be a determination that severing the parental right is in the best interests of the child.”¹⁰ When, as in Green’s case, the statutory basis for termination is failure to plan,¹¹ DFS must also prove the existence of at least one additional statutory condition [under section 1103(a)(5)],¹² and that DFS made *bona fide*, reasonable efforts to reunite the family.¹³

(17) In this case, the Family Court found that DFS had proven by clear and convincing evidence that Green had failed to plan for his children’s physical and mental health and development, despite DFS’ *bona fide* reasonable efforts to reunite the family. Noting that Green had “admitted

⁹ *Id.* at 537. See Del. Code Ann. tit. 13, § 1103(a) (2009) (listing grounds for termination of parental rights).

¹⁰ *Shepherd v. Clemens*, 752 A.2d at 537. See Del. Code Ann. tit. 13, § 722(a) (listing best interest factors).

¹¹ See Del. Code Ann. tit. 13, § 1103(a)(5) (providing in relevant part that termination of parental rights may be initiated whenever it appears in the child’s best interest and that the parent has failed to plan adequately for the child’s physical needs or mental and emotional health and development).

¹² See Del. Code Ann. tit. 13, § 1103(a)(5) (listing additional conditions including that the child has been in State care for six months, the parent is not able or willing to assume prompt legal and physical custody of the child and to pay for the child’s support, or that failure to terminate the relationship of parent and child will result in continued emotional instability or physical risk to the child). *Powell v. Dep’t of Serv. for Children, Youth and their Families*, 963 A.2d 724, 731-33 (Del. 2008) (citing *Div. of Family Serv. v. Hutton*, 765 A.2d 1267, 1271-72 (Del. 2001)).

¹³ See *Powell v. Dep’t of Serv. for Children, Youth and their Families*, 963 A.2d 724, 737 (Del. 2008) (citing *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989)). See generally *In re Burns*, 519 A.2d 638, 646-49 (Del. 1986) (outlining state and federal statutory schemes requiring state agencies to expend all reasonable efforts to preserve the family unit).

that he [did not] currently have suitable housing . . . to resume custody,” the Family Court found that Green had “failed to adequate[ly] address” housing. The Family Court also found that Green had “difficulty maintaining control over [his] children’s behavior,” and that his children had “demonstrated improved behaviors since being placed in foster families.” Finally, the Family Court found that Green’s children had lived in foster care since February 2, 2007.¹⁴

(18) Having concluded that at least one statutory ground existed to terminate Green’s parental rights, the Family Court next considered whether termination of Green’s parental rights was in the best interest of his children.¹⁵ After weighing the best interest factors, the Family Court found that DFS had proven by clear and convincing evidence that it was in the best interest of Green’s children that termination of Green’s parental rights take place. In the June 2, 2009 decision, the Family Court stated:

The record reflects that [Green’s children] have significant educational and emotional needs, all of which require a significant amount of resources, yet . . . [Green] was not able to identify [his children’s] health issues, their medication regimen nor was he able to articulate their academic progress. While the needs of [Green’s children] are great, the ability of [Green] to meet these needs is non-existent. . . . [T]he Court is also aware that

¹⁴ Del. Code Ann. tit. 13, § 1103(a)(5)a.1.

¹⁵ Del. Code Ann. tit. 13, § 722(a).

[Green's children] have been ambivalent at best in stating a desire to return to [Green's] household. According to the testimony, when initially placed in foster care, [Green's children] had poorly developed social skills with respect to their personal hygiene habits and inter-sibling behavior, as well as their behavior towards others. However, in the 2 years that [Green's children] have been in foster care, they have experienced significant improvements in these aspects of their development. The relationship of [Green's children] to [Green] presents more negative aspects than positive from the [c]ourt's perspective and does not foster the wellbeing of [Green's children].

(19) Our review of the Family Court's decision to terminate an individual's parental rights involves consideration of the facts and law, as well as the inferences and deductions made by the Family Court.¹⁶ To the extent that the issues on appeal implicate rulings of law, our review is *de novo*.¹⁷ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the Family Court to assure that they are sufficiently supported by the record and are not clearly wrong.¹⁸ This Court will not disturb inferences and deductions that are supported by

¹⁶ *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 440 (Del. 2010) (citing *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

¹⁷ *Id.* (citing *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d at 730-31; *see also In re Heller*, 669 A.2d 25, 29 (Del. 1995); *Black v. Gray*, 540 A.2d 431, 433 (Del. 1988)).

¹⁸ *Id.* (citing *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

the record and that are the product of an orderly and logical deductive process.¹⁹ If the Family Court has correctly applied the law, our review is limited to abuse of discretion.²⁰

(20) In this case, there is clear and convincing evidence in the record that logically supports the Family Court's termination of Green's parental rights on the basis of his failure to plan adequately for [his children's] physical needs or mental health and development. The record undisputedly reflects that Green's children have lived in foster care since February 2, 2007. The record further supports the Family Court's findings that DFS made *bona fide* reasonable efforts to reunite Green with his children, and that ultimately the termination of Green's parental rights was in the best interests of his children.

NOW, THEREFORE, IT IS ORDERED that the motions to affirm of DFS and the attorneys guardian *ad litem* are GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁹ *Id.* (citing *Powell v. Dep't of Serv. for Children, Youth & their Families*, 963 A.2d at 731.)

²⁰ *Id.*